

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSHUA ROGERS,

Plaintiff,

-against-

LOUIS DEJOY; USPS,

Defendants.

24-CV-7076 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action under the Court’s federal question jurisdiction, asserting claims of “mail theft, improper handling of mail, ID theft, financial fraud.” (ECF 1 ¶ I.) By order dated October 2, 2024, the Court granted Plaintiff’s request to proceed *in forma pauperis* (“IFP”), that is, without prepayment of fees. For the reasons set forth below, the complaint is dismissed.

**STANDARD OF REVIEW**

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction of the claims raised. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in

original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

Rule 8 requires a complaint to include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

### **BACKGROUND**

The complaint contains the following allegations. The mail at Plaintiff’s address has been “illegally placed on hold, forwarded, picked up and intercepted and signed for without [his] permission.” (ECF 1 ¶ III.) According to Plaintiff, “postal carrier” has signed for Plaintiff’s certified letters without Plaintiff receiving a “copy of the notice.” (*Id.*) Plaintiff further claims that the post office is “withholding” his mail and violating his privacy. (*Id.*) Plaintiff asserts that “whoever this group of thieves are know [Plaintiff] has settlements coming in mail & they are taking advantage of [him.” (*Id.*) Plaintiff seeks the “replacement of all settlement stolen . . . from 32K – over a million” and 15 million.” (*Id.* ¶ IV.)

## DISCUSSION

The USPS is “an independent establishment of the executive branch of the Government of the United States.” 39 U.S.C. § 201. The doctrine of sovereign immunity bars federal courts from hearing all suits for monetary damages against the federal government, including its agencies and employees acting in their official capacities, except where sovereign immunity has been waived. *See United States v. Mitchell*, 445 U.S. 535, 538 (1980) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). As a governmental agency, the USPS and its employees are entitled to sovereign immunity. *See Dolan v. USPS*, 546 U.S. 481, 484 (2006).

The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-80 (FTCA), provides for a waiver of sovereign immunity for injuries arising from the tortious conduct of federal officers or agents acting within the scope of their office or employment. 28 U.S.C. § 1346(b)(1). Congress, however, has carved out certain exceptions to the FTCA’s broad waiver of sovereign immunity. One exception is the “postal matter exception,” which preserves sovereign immunity for “[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.” 28 U.S.C. § 2680(b); *Raila v. United States*, 355 F.3d 118, 119 (2d Cir. 2004). The Supreme Court of the United States has construed this provision as retaining immunity for “injuries arising, directly or consequentially, because mail either fails to arrive at all or arrives late, in damaged condition, or at the wrong address.” *Dolan*, 546 U.S. at 489. Thus, the USPS is immune from suit for “personal or financial harms arising from nondelivery or late delivery of sensitive materials or information[.]” *Id.*

Plaintiff's claim falls squarely within the postal matter exception. The FTCA therefore does not waive the sovereign immunity of the USPS for such claims, and Plaintiff's claims must be dismissed on the basis of sovereign immunity, for lack of subject matter jurisdiction.<sup>1</sup>

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123–24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff's complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend his complaint.

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### CONCLUSION

Plaintiff's complaint, filed IFP under 28 U.S.C. § 1915(a)(1), is dismissed for failure to state a claim, 28 U.S.C. § 1915(e)(2)(B)(ii), and for lack of subject matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3)*.

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<sup>1</sup> The Postal Rate Commission ("PRC") has exclusive jurisdiction over service complaints involving the USPS. *See* 39 U.S.C. § 3662 (2006); *Nolen v. U.S. Postal Serv.*, No. 11-CV-114, 2013 WL 660153, at \*8 (D. Vt. Feb. 22, 2013); *Shelby Res., Inc. v. U.S. Postal Serv.*, 619 F. Supp. 1546, 1548-49 (S.D.N.Y. 1985) (holding that a hearing by the PRC is the "sole remedy for a user of postal services who is not receiving adequate service"). An adverse ruling from the PRC may be appealed to the United States Court of Appeals for the District of Columbia. *See* 39 U.S.C. § 3663; *Foster v. Pitney Bowes, Inc.*, No. 11-CV-303, 2012 WL 2997810, at \*3 (E.D. Pa. July 23, 2012).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Court directs the Clerk of Court to enter judgment in this case.

SO ORDERED.

Dated: December 10, 2024  
New York, New York

/s/ Laura Taylor Swain

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LAURA TAYLOR SWAIN  
Chief United States District Judge